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MAQĀṢID AL-SHARĪ'AH: THE OBJECTIVES OF ISLAMIC LAW

*MOHAMMAD HASHIM KAMALI**

INTRODUCTION

This essay is presented in five sections beginning with a general characterisation of the *maqāṣid al-Sharī'ah* and its origins in the Qur'ān. The next section addresses the classification of the *maqāṣid* and a certain order of priority that is integrated into the structure of the *maqāṣid*. Section three is devoted to historical developments and the contributions of some of the leading *'ulamā'*, especially that of Abū Isḥāq Ibrāhīm al-Shāṭibī, to the theory of the *maqāṣid*. Section four looks into the differential approaches the *'ulamā'* have taken toward the identification of the *maqāṣid*. The last section highlights the relevance of the *maqāṣid* to *ijtihād* and the ways in which the *maqāṣid* can enhance the scope and calibre of *ijtihād*.

TEXTUAL ORIGINS

Maqāṣid al-Sharī'ah, or the goals and objectives of Islamic law, is an evidently important and yet somewhat neglected theme of the *Sharī'ah*. Generally the *Sharī'ah* is predicated on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth. The Qur'ān is expressive of this when it singles out the most important purpose of the Prophethood of Muhammad (peace be on him) in such terms as: "We have not sent you but a mercy to the world" (21: 107). This can also be seen perhaps in the Qur'ān's

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characterisation of itself in that it is "a healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers" (and mankind) (10: 57).

The two uppermost objectives of compassion (*raḥmah*) and guidance (*hudā*) in the foregoing verses are then substantiated by other provisions in the Qur'ān and the *Sunnah* that seek to establish justice, eliminate prejudice, and alleviate hardship. The laws of the Qur'ān and the *Sunnah* also seek to promote cooperation and mutual support within the family and the society at large. Justice itself is a manifestation of God's mercy as well as an objective of the *Sharī'ah* in its own right. Compassion (*raḥmah*) is manifested in the realisation of benefit (*maṣlaḥah*) which the *'ulamā'* have generally considered to be the all-prevasive value and objective of the *Sharī'ah* and is to all intents and purposes synonymous with *raḥmah*.

Educating the individual (*tahdhīb al-fard*) is another important objective of the *Sharī'ah* so much so that it comes, in order of priority, even before justice and *maṣlaḥah*. For these are both socially-oriented values which acquire much of their meaning in the context of social relations, whereas *tahdhīb al-fard* seeks to make every individual a trustworthy agent and carrier of the values of the *Sharī'ah*, and it is through educating the individual that the *Sharī'ah* seeks to realise most of its social objectives. The overall purpose of a great deal of the laws and values of the *Sharī'ah,* especially in the spheres of *'ibādāt* and moral teaching, is to train an individual who is mindful of the virtues of *taqwā* and becomes an agent of benefit to others.[1]

The Qur'ān is expressive, in numerous places and a variety of contexts, of the rationale, purpose and benefit of its laws so much so that its text becomes characteristically goal-oriented. This feature of the Qur'ānic language is common to its laws on civil transactions (*mu'āmalāt*) as well as devotional matters (*'ibādāt*). Thus when the text expounds the rituals of *wuḍū'* (ablution for prayer) it follows on to declare that "God does not intend to inflict hardship on you. He intends cleanliness for you and to accomplish his favour upon you" (5: 6). Then with regard to the prayer itself, it is declared that "truly *ṣalāh* obstructs promiscuity and evil" (29: 45). With reference to *jihād* the Qur'ān similarly proclaims its purpose in such term that "permission is granted to those who fight because they have been wronged" (22: 39). The purpose, in other words, of legalising *jihād* is to fight injustice (*ẓulm*) and the purpose of *ṣalāh* is to attain spritiual purity and excellence that is accomplished together with physical cleanliness through ablution before prayer. With reference to the law of just retaliation (*qiṣāṣ*), the

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text similarly declares that "in *qiṣāṣ* there is life for you, o people of understanding" (2: 179); and with regard to poor-due (*zakāh*), the Qur'ān validates it "so that wealth does not circulate only among the wealthy" (57:7). According to another text, the believers are under duty to lower their gaze in their encounter with members of the opposite sex, "for this will help you to attain greater purity" (24: 30).

One can add many more examples of the law which show how the Qur'ān and the *Sunnah* are expressive of their goal justification, cause and benefit in the affirmative sense, just as one finds numerous references to evil conduct and crime which is reprimanded and made punishable, in the negative sense, in order to prevent injustice, corruption and prejudice. In the area of commerce and *mu'āmalāt,* the Qur'ān forbids exploitation, usury, boarding and gambling which are harmful and jeopardise the objective of fair dealing in the market-place. The underlying theme in virtually all of the broad spectrum of the *aḥkām* is realisation of benefit (*maṣlaḥah*) which is regarded as the *summa* of the *maqāṣid.* For justice is also a *maṣlaḥah* and so is *tahdhīb al-fard.* The *maṣāliḥ* (pl. of *maṣlaḥah*), thus become another name for the *maqāṣid* and the *'ulamā'* have used the two terms almost interchangeably.

CLASSIFICATION OF BENEFITS

The *'ulamā'* have classified the entire range of *maṣāliḥ*-cum-*maqāṣid* into three categories in a descending order of importance, beginning with the essential *maṣāliḥ,* or *ḍarūriyyāt,* followed by the complementary benefits, or *ḥājiyyāt*, and then the embellishments *taḥsīniyyāt*. The essential interests are enumerated at five, namely faith, life, lineage, intellect and property. These are, by definition, essential to normal order in society as well as to the survival and spiritual well-being of individuals, so much so that their destruction and collapse will precipitate chaos and collapse of normal order in society. The *Sharī'ah* seeks to protect and promote these values and validates measures for their preservation and advancement. *Jihād* has thus been validated in order to protect religion, and so is just retaliation (*qiṣāṣ*) which is designed to protect life. The *Sharī'ah* takes affirmative and also punitive measures to protect and promote these values. Theft, adultery and wine-drinking are punishable offences as they pose a threat to the protection of private property, the well-being of the family, and the integrity of human intellect respectively. In an affirmative sense again, but at a different level, the *Sharī'ah* encourages work and trading activity in order to enable the individual to earn a living, and it takes elaborate measures to ensure the

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smooth flow of commercial transactions in the market-place. The family laws of the *Sharī'ah* are likewise an embodiment largely of guidelines and measures that seek to make the family a safe refuge for all of its members. The *Sharī'ah* also encourages pursuit of knowledge and education to ensure the intellectual well-being of the people and the advancement of arts and civilisation. The essential *maṣāliḥ*, in other words, constitute an all-encompassing theme of the *Sharī'ah* as all of its laws are in one way or another related to the protection of these benefits. These benefits are an embodiment, in the meantime, of the primary and overriding objectives of the *Sharī'ah*.

The second class of the interests, known as *ḥājiyyāt,* or complementary interests, are not an independent category as they also seek to protect and promote the essential interests, albeit in a secondary capacity. These are defined as benefits which seek to remove severity and hardship that do not pose a threat to the very survival of normal order. A great deal of the concessions (*rukhaṣ*) such as the shortening of *ṣalāh*, and opening of the fast for the sick and the traveller, which the *Sharī'ah* has granted, are aimed at preventing hardship, but they are not essential since people can live without them if they had to. In almost all areas of obligatory *'ibādāt* the *Sharī'ah* has granted such concessions. Similarly, in the area of criminal law, the *ḥadīth* which proclaims that "prescribed penalties are suspended in all cases of doubt"[2] protects a secondary interest in that it regulates the manner in which punishments are enforced. These punishments are in turn designed to protect the essential interests through judicial action. In the sphere of *mu'āmalāt*, the *Sharī'ah* validated certain contracts, such as the sale of *salam*, and also that of lease and hire (*ijārah*) because of the people's need for them notwithstanding a certain anomaly that is attendant in both. In the sphere of family law, once again the *Sharī'ah* permits divorce in situations of necessity by way, that is, of a concession, which is aimed, in the final analysis, at ensuring the well-being of the family and defending it against intolerable conflict.

A *maṣlaḥah* of the second class is elevated to the rank of the essential *maṣlaḥah* when it concerns the public at large. To illustrate this, the validity of *ijārah* may be of secondary importance to an individual but it is an essential interest for the society at large. Similarly, certain concessions that are granted in the sphere of *'ibādāt* may be secondary to the survival of an individual but it becomes a matter of primary interest for the community as a whole. In the event of a conflict arising between the various classes of interest, the lesser of these may be sacrificed in order to protect a higher interest. When there is a plurality

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of conflicting interests and none appears to be clearly preferable, then prevention of evil takes priority over the realisation of benefit.[3] This is because the *Sharī'ah* is more emphatic on the prevention of evil, as can be seen in the *ḥadīth* where the Prophet (peace be on him) has reportedly said: "When I order you to do something, do it to the extent of your ability, but when I forbid you from something, then avoid it (altogether)".[4]

The third class of *maṣāliḥ*, known as *taḥsīniyyāt*, are in the nature of desirabilities as they seek to attain refinement and perfection in the customs and conduct of people at all levels of achievement. The *Sharī'ah* thus encourages cleanliness of body and attire for purposes of prayer and recommends, for instance, the wearing of perfume when attending the congregational Friday prayer; contrariwise, it discourages the consumption of raw garlic on that occasion. The *Sharī'ah* also encourages charity to those in need beyond the level of obligatory taxes, and in *'ibādāt*, it recommends supererogatory prayers, and so forth. In customary matters and relations among people, the *Sharī'ah* encourages gentleness (*rifq*), pleasant speech and manner (*ḥusn al-khulq*) and fair dealing (*iḥsān*). The judge and the head of state are similarly counselled not to be too eager in the enforcement of penalties, such a course being considered a desirable one to take. The purpose of all this is the attainment of beauty and perfection in all areas of human conduct.

This last category of interests is perhaps of special importance as it is pervasive and relates to all other *maṣāliḥ*. One can perform the obligatory *ṣalāh*, for example, in different ways, with or without proper concentration and giving each of its parts their due attention, or perform it in a hasty and thoughtless manner, and the difference between them is that the first is espoused with the attainment of both the essential and the desirable, and the second can at best be discharged as a duty. One can extend this analysis to almost every area of human conduct and the implementation of almost all of the *aḥkām* of the *Sharī'ah*. It should be obvious, then, that the classification of *maṣāliḥ* need not be confined to the *aḥkām* of the *Sharī'ah* or to religious matters alone as it is basically a rational construct that applies to customary, social, political, economic and cultural affairs and so forth. To build the first hospital in a town is likely to be necessary and essential, but to build a second and third may be only complementary and desirable. And then to equip each one with the latest and most efficient health care facilities may fall under the category either of the second or the third classes of interests, depending, of course, on the general conditions of each locality. From this analysis, it also appears that classifying a certain interest and *maṣlaḥah* under one

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or the other of these categories is likely to be relative and involve value judgment that contemplate the attendant circumstances of each case.

HISTORY IN BRIEF

As a theme of the *Sharī'ah* in its own right, the *maqāṣid* did not receive much attention in the early stages of the development of Islamic legal thought and, as such, they represent rather a later addition to the juristic legacy of the *madhāhib*. Even to this day many a reputable textbook on *Uṣūl al-Fiqh* does not mention *maqāṣid al-Sharī'ah* in their usual coverage of familiar topics. This is partly due perhaps to the nature of the subject, which is largely concerned with the philosophy of the law, its outlook and objective, rather than the specific formulations of its text. Although the *maqāṣid* as a distinctive theme of the *Sharī'ah* are obviously relevant to *ijtihād*, they have not been treated as such in the conventional expositions of the theory of *ijtihād*.

Islamic legal thought is, broadly speaking, preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of *Uṣūl al-Fiqh* has advanced that purpose to a large extent. This literalist orientation of the juristic thought was generally more pronounced in the approach of the tendency — the traditionist — the *Ahl al-Ḥadīth* — than that of the Rationalists — the *Ahl al-Ra'y*. The literalists thus tended to view the *Sharī'ah* as a set of rules, commands and prohibitions that were addressed to the competent individual *mukallaf* and all that the latter was expected to conform to its directives. The precedent of the leading Companions indicated, on the other hand, that they saw the *Sharī'ah* both as a set of rules and a value system in which the specific rules were seen as tangible manifestations of the overriding values. The textualist tradition of the first three centuries did not take much interest in *maqāṣid al-Sharī'ah* and it was not until the time of al-Ghazālī (d. 505/1111) and then al-Shātibi (d. 790/1388) that significant developments were made in the formulation of the theory of *maqāṣid*.

The basic outlook that was advocated by the theory of the *maqāṣid* was not denied by the leading schools, yet the *maqāṣid* remained on the fringes of the mainstream juristic thought that was manifested in the various themes and doctrines of *Uṣūl al-Fiqh*. Except for the Ẓāhirīs who maintained that the *maqāṣid* are only known when they are identified and declared by the clear text, the majority of *'ulamā'* did not confine the *maqāṣid* to the clear text alone. For they perceived and understood the *Sharī'ah* to be rational, goal-oriented and its rules generally founded on identifiable causes. A mere conformity to rules that went against the purpose and outlook of the *Sharī'ah* was, therefore, generally considered

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unacceptable. A totally different approach to the *maqāṣid* was taken by the Bāṭiniyyah who held, contrary to the Ẓāhirīs, that the essence and objective of the *nuṣūṣ* were always to be found, not in the explicit words of the text, but in its hidden meaning (i.e. *bāṭin*), hence their name, the Bāṭiniyyah.[5] There were also differences of orientation among the leading *madhāhib* toward the *maqāṣid*: some were more open to it than others, but elaboration into the goals and objectives of the *Sharī'ah* was generally not encouraged. This rather unspoken attitude contrasted with the fact that the Qur'ān itself exhibits considerable awareness of the underlying purposes and objectives of its laws and often expounds the causes and rationale on which they are founded. The general reticence of the *'ulamā'* in respect of the identification of the *maqāṣid* might have partly been due to the elements of projection and prognostication that such an exercise was likely to involve. Who can tell, for sure, for example, that this or that is the purpose and overriding objective of the Lawgiver, without engaging in a degree of speculation, unless of course, the text itself declared it so. But then to confine the scope of the *maqāṣid* only to the clear declaration of the texts was also not enough, as I shall presently elaborate.

It was not until the early fourth century that the term '*maqāṣid*' was used in the juristic writings of Abū 'Abd Allāh al-Tirmidhī al-Ḥakīm (d. 320/932) and recurrent references to it appeared in the works of Imām al-Ḥaramayn al-Juwaynī (d. 478/1085) who was probably the first to classify the *maqāṣid al-Sharī'ah* into the three categories of essential, complementary and desirable (*ḍarūriyyāt, ḥājiyyāt, taḥsīniyyāt*) which has gained general acceptance ever since. Juwaynī's ideas were then developed further by his pupil, Abū Ḥamīd al-Ghazālī who wrote at length on public interest (*maṣlaḥah*) and ratiocination *(ta'līl)* in his works, *Shifā' al-Ghalīl* and *al-Mustaṣfā*. Ghazālī was generally critical of *maṣlaḥah* as a proof but validated it if it promoted the *maqāṣid* of the *Sharī'ah*. As for the *maqāṣid* themselves, Ghazālī wrote categorically that the *Sharī'ah* pursued five objectives, namely those of faith, life, intellect, lineage and property which were to be protected as a matter of absolute priority.[6]

A number of prominent writers continued to contribute to the *maqāṣid*, not all of them consistently perhaps, yet important to the development of ideas. Sayf al-Dīn al-Āmidī (d. 631/1233) identified the *maqāṣid* as criteria of preference *al-tarjīḥ* among conflicting analogies and elaborated on an internal order of priorities among the various classes of *maqāṣid*. Āmidī also confined the essential *maqāṣid* to only five. The Mālikī jurist, Shihāb al-Din al-Qarāfī (d. 684/1285) added a

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sixth to the existing list, namely the protection of honour (*al-'irḍ*) and this was endorsed by Tāj al-Dīn 'Abd al-Wahhāb ibn al-Subkī (d. 771/1370) and later by Muḥammad ibn 'Alī al-Shawkānī (d. 1250/1834). The list of five essential values was evidently based on a reading of the relevant parts of the Qur'ān and the *Sunnah* on the prescribed penalties (*ḥudūd*). The value that each of these penalties sought to vindicate and defend was consequently identified as an essential value. The latest addition (i.e. *al-'irḍ*) was initially thought to have been covered under lineage (*al-nasl,* also *al-nasab*), but the proponents of this addition relied on the fact that the *Sharī'ah* had enacted a separate *ḥadd* punishment for slanderous accusation (*al-qadhf*), which justified the addition.[7] 'Izz al-Dīn 'Abd al-Salām al-Sulamī's (d. 660/1262) renowned work, *Qawā'id al-Aḥkām,* was in his own characterisation a work on '*maqāṣid al-aḥkām*' and addressed the various aspects of the *maqāṣid* especially in relationship to *'illah* (effective cause) and *maṣlaḥah* (public interest) in greater detail. Thus he wrote at the outset of his work that "the greatest of all the objectives of the Qur'ān is to facilitate benefits (*maṣāliḥ*) and the means that secure them and that the realisation of benefit also included the prevention of evil".[8] Sulamī added that all the obligations of the *Sharī'ah* (*al-takālīf*) were predicated on securing benefits for the people in this world and the next. For God Most High is Himself in no need of benefit nor is He in need of the obedience of His servants. He is above all this and cannot be harmed by the disobedience of transgressors, nor benefit from the obedience of the righteous. The *Sharī'ah* is, in other words, concerned, from the beginning to the end, with the benefits of God's creatures.

Taqī al-Dīn ibn Taymiyyah (d. 728/1328) was probably the first scholar to depart from the notion of confining the *maqāṣid* to a specific number and added, to the existing list of the *maqāṣid*, such things as fulfilment of contracts, preservation of the ties of kinship, honouring the rights of one's neighbour, in so far as the affairs of this world are concerned, and the love of God, sincerity, trustworthiness, and moral purity, in relationship to the hereafter.[9] Ibn Taymiyyah thus revised the scope of the *maqāṣid* from a designated and specified list into an open-ended list of values, and his approach is now generally accepted by contemporary commentators, including Aḥmad al-Raysūnī, Yūsuf al-Qaraḍāwī and others.[10] Qaraḍāwī has further extended the list of the *maqāṣid* to include social welfare and support (*al-takāful*), freedom, human dignity and human fraternity, among the higher objectives and *maqāṣid* of the *Sharī'ah*.[11] These are undoubtedly upheld by both the

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detailed and the general weight of evidence in the Qur'ān and the *Sunnah*.

I propose to add economic development and strengthening of R & D in technology and science to the structure of *maqāṣid* as they are crucially important in determining the standing of the *ummah* in the world community. It would appear from this analysis that the *maqāṣid al-Sharī'ah* remain open to further enhancement which will depend, to some extent, on the priorities of every age.

IDENTIFICATION OF *MAQĀṢID*

As already indicated the *'ulamā'* have differed in their approach to the identification of the *maqāṣid*. The first approach to be noted is the textualist approach, which confines the identification of the *maqāṣid* to the clear text, commands and prohibitions, which are the carriers of the *maqāṣid*. The *maqāṣid*, according to this view, have no separate existence outside this framework. Provided that a command is explicit and normative it conveys the objective *maqṣūd* of the Lawgiver in the affirmative sense. Prohibitions are indicative of the *maqāṣid* in the negative sense in that the purpose of a prohibitive injunction is to suppress and avert the evil that the text in question has contemplated. This is generally accepted, but there are certain tendencies within this general framework. While the Ẓāhirīs tend to confine the *maqāṣid* to the obvious text, the majority of jurists takes into consideration both the text and the underlying *'illah* and rationale of the text.[12] The chief exponent of the *maqāṣid*, Shāṭibī, has spoken affirmatively of the need to observe and respect the explicit injunctions, but then he added that adherence to the obvious text should not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. Rigidity of this kind, Shāṭibī added, was itself contrary to the objective (*maqṣūd*) of the Lawgiver, just as would be the case with regard to neglecting the clear text itself. When the text, whether a command or a prohibition, is read in conjunction with its objective and rationale, this is a firm approach, one which bears greater harmony with the intention of the Lawgiver.[13] Shāṭibī elaborated that the *maqāṣid* that are known from a comprehensive reading of the text are of two types, primary (*aṣliyyah*) and secondary (*ṭab'iyyah*). The former are the essential *maqāṣid* or *ḍarūriyyāt* which the *mukallaf* must observe and protect regardless of personal predilections, whereas the supplementary *maqāṣid* — *ḥājiyyāt* — are those which leave the *mukallaf* with some flexibility and choice.

A comprehensive reading of the textual injunctions of the *Sharī'ah* has given rise to such questions as to whether the means to a *wājib* or

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ḥarām should also be seen as a part of the objective that is pursued by that injunction; whether the means to a command, in other words, is also an integral part of that command. Another question raised is whether avoiding the opposite of a command is integral to the goal and objective that is sought by that command. The general response given to these questions is that the supplementary aspects of commands and prohibitions are an integral part of their objectives, although disagreements have emerged over details. There is a general agreement that the opposite of a command amounts to a prohibition in the event where that opposite can be clearly identified. Most of the injunctions of the *Sharī'ah* are easily understood, and their objectives as well as their opposites can be known and ascertained from the reading of the clear text. It is thus noted that whatever might be necessary for the carrying out of a command or a *wājib* is also a part of that *wājib*. Shāṭibī has similarly concluded that whatever is complementary to the *maqāṣid* and in the service thereof is also a part of the *maqāṣid*. The question then arises regarding the silence of the Lawgiver in respect of a certain conduct in situations especially where a general reading of the relevant evidence sheds light on the value of that conduct. The question may be put as follows: We know that the *maqāṣid* are known from clear injunctions, but can they also be known from a general reading of the *nuṣūṣ* by way of induction? This is where Shāṭibī has given an original response, and this is what we take up next.

Induction (*istiqrā'*) to Shāṭibī is one of the most important methods of identifying the *maqāṣid* of the *Sharī'ah*. There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. Shāṭibī illustrates this by saying that nowhere in the Qur'ān is there a specific declaration to the effect that the *Sharī'ah* has been enacted for the benefit of the people. Yet this is a definitive conclusion which is drawn from the collective reading of a variety of textual proclamations.[14] Shāṭibī then adds that the benefits (*maṣāliḥ*) are to be understood in their broadest sense which is inclusive of all benefits pertaining to this world and the hereafter, those of the individual and the community, material, moral and spiritual, and those which pertain to the present as well as the interests of the future generations. This broad meaning of benefits also includes prevention and elimination of harm. These benefits cannot always be verified and ascertained by human reason alone without the aid and guidance of divine revelation.[15]

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The typical classification of the *maqāṣid* into the three categories of essential, complementary and desirable, and the conclusion that the Lawgiver has intended to protect these are based, once again, on induction as there is no specific declaration on them in the textual sources. On a similar note, the ruling of the *Sharī'ah* that the validity of an act of devotion *('ibādah)* cannot be established by means of *ijtihād* is an inductive conclusion which is drawn from the detailed evidence on the subject, as there is no specific injuction in the sources to that effect. These conclusions are, in the meantime, of great overall importance; they are not open to doubt, nor is their credibility a matter of speculative reasoning.[16] It is also the same inductive method which has led the *'ulamā'* to the conclusion that the protection of the five values of faith, life, intellect, property and lineage is of primary importance to the *Sharī'ah* — there being no textual ruling to specify any category or number of values in that order.

Shāṭibī's inductive method is not confined to the identification of objectives and values but also extends to commands and prohibitions, which may either be obtained from the clear text, or from a collective reading of a number of textual proclamations that may occur in a variety of contexts.[17] Shāṭibī then goes a step further to say that the inductive conclusions and positions that are so established are the general premises and overriding objectives of the *Sharī'ah* and thus have a higher order of importance than specific rules. It thus becomes evident that induction is the principal method of reasoning and proof to which Shāṭibī resorted in his theory of the *maqāṣid* and it is also in this regard that he has made an original contribution to this theme.

Shāṭibī's approach to induction is reminiscent of the knowledge that is acquired of the personality and character of an individual that is based on sustained association with that individual and observation of his conduct over a period of time. This kind of knowledge is broad and holistic, as it is enriched with insight, and likely to be more reliable when compared to the knowledge that might be based only on the observation of specific, isolated incidents in the daily activities of the individual concerned.

MAQĀṢID AND *IJTIHĀD*

Having expounded his theory of the *maqāṣid,* Shāṭibī accentuated the knowledge of the *maqāṣid* as a prerequisite of attainment to the rank of a *mujtahid*. Those who neglect acquiring mastery of the *maqāṣid* do so to their own peril as it would make them liable to error in *ijtihād*. Included among these were the proponents of pernicious innovation (*ahl*

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al-bid'ah) who only looked at the apparent text of the Qur'ān without pondering over its objective and meaning. These innovators (an allusion to the Khārijites) held on to the intricate segments of the Qur'ān (*al-mutashābihāt*) and premised their conclusions on them. They took a fragmented and atomistic approach to the reading of the Qur'ān which failed to tie up the relevant parts of the texts together. The leading *'ulamā'* have, on the other hand, viewed the *Sharī'ah* as a unity in which the detailed rules should be read in the light of their broader premises and objectives.[18] Ṭāhir ibn 'Āshūr, the author of another landmark work on the *maqāṣid, Maqāṣid al-Sharī'ah al-Islāmiyyah*, has also confirmed that knowledge of the *maqāṣid* is indispensible to *ijtihād* in all of its manifestations.[19] Some *'ulamā'* who confined the scope of their *ijtihād* only to literal interpretations have found it possible, Ibn 'Āshūr added, to project a personal opinion into the words of the text and fell into error as they were out of line with the general spirit and purpose of the surrounding evidence.[20] This may be illustrated by reference to the different views of the *'ulamā'* on whether the *zakāh* on commodities such as wheat and dates must be given in kind or could it also be given in their monetary equivalent. The Ḥanafīs have validated giving of *zakāh* in monetary equivalent but al-Shāfi'i (d. 204/820) has held otherwise. The Ḥanafī view is founded on the analysis that the purpose of *zakāh* is to satisfy the need of the poor and this can also be achieved by paying the monetary equivalent of a commodity. Ibn Qayyim al-Jawziyyah has likewise observed regarding (*ṣadaqat al-fiṭr)* that there are *aḥādith* on the subject which refer sometimes to dates and at other times to raisins or foodgrains as these were the staple food of Madīnah and its environs at the time. The common purpose in all of these was to satisfy the need of the poor rather than to confine its payment in a particular commodity.[21] To give another example, Mālik (d. 179/795) was asked about a person who paid his *zakāh* ahead of time, that is, prior to the expiry of one year, whether he was liable to pay it again at the end of the year. Mālik replied that he was and drew an analogy with the ritual prayer (*ṣalāh*). If someone performs his prayer before its due time, he must perform it again in its proper time. Subsequent Mālikī jurists, including Ibn al-'Arabī (d. 543/1148) and Ibn Rushd (d. 520/1126), have reversed this position and stated that early payment of *zakāh* was permissible. There was, they added, a difference between *ṣalāh* and *zakāh* in that the former was time-bound to specific times, but no such time had been stipulated for the payment of *zakāh*. Hence *zakāh* may be paid earlier especially if it is prepaid by only a few weeks or even longer.[22]

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Abū Ḥanīfah (d. 150/767) has often been criticised by the *Ahl al-Ḥadīth* for having departed on occasions from the wording of *aḥādith* to an alternative ruling. But on closer examination it becomes clear that Abū Ḥanīfah has done so only when he reached a different conclusion by reading a particular *ḥadīth* in conjunction with other relevant evidence in the Qur'ān and the *Sunnah*.

It will also be noted that on occasions *mujtahid*s and judges have issued decisions in disputed matters, which were found upon further scrutiny to be in disharmony with the goals and objectives of the *Sharī'ah*. Instances of this nature are also encountered with reference to contracts since a contract may duly have been signed and made binding on the parties and only then it was found to be unfair to one of the parties due to some unexpected change of circumstance. In that eventuality the judge and *mujtahid* can hardly ignore the subsequent changes and insist on the obligatoriness of the said contract on purely formal grounds. For a contract is no longer the governing law of contracting parties (*sharī'at al-'āqidayn*) if it proves to be an instrument of injustice. Such a contract must be set aside and justice, which is the goal and *maqṣūd* of the Lawgiver, must be given priority over considerations of conformity to an untenable contract.[23] Without going into details, instances of conflict between the overriding objectives of the *Sharī'ah* and a particular ruling thereof can also arise with reference to the rulings of analogy (*qiyās*). A rigid adherence to *qiyās* in certain cases may lead to unsatisfactory results, hence a recourse may be had to *istiḥsān* in order to obtain an alternative ruling that is in harmony with the objectives of the *Sharī'ah*.[24]

Another feature of the *maqāṣid* which is important to *ijtihād* is the attention a *mujtahid* must pay to the end result and consequence of his ruling. For a *fatwā* or *ijtihād* would be deficient if it fails to contemplate its own consequences (*ma'ālāt*). We note in the *Sunnah* of the Prophet (peace be on him) instances where the Prophet paid attention to the consequence of his ruling often in preference to other considerations. There were cases, for instance, where the Prophet (peace be on him) knew about the subversive activities of the hypocrites but he did not pursue them for reasons, as he stated himself, that "I fear people might say that Muḥammad kills his own Companions".[25] The Prophet (peace be on him) also avoided to change the location of the Ka'bah to its original foundations where the patriarch Prophet, Ibrāhīm, had laid them. The pre-Islamic Arabs of Makkah had evidently changed that location, and when 'Ā'ishah suggested to the Prophet (peace be on him) that he could perhaps restore the Ka'bah to its original position, he responded: "I

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would have done so if I didn't fear that this may induce our people into disbelief".[26] In both of these cases, the Prophet (peace be on him) did not take what would be thought to be the normal course, that is, to kill the hypocrites, and to restore the Ka'bah to its original foundations because of the adverse consequences that were feared as a result of so doing.

The normal course in the context of crimes and penalties is, of course, to apply the punishment whenever the cause and occasion for it is present. There may be cases, however, where pardoning the offender appears a preferable course to take, and it is for the judge and *mujtahid* to pay attention to them, and then reflect them in his judgment. Shāṭibī has in this connection drawn a subtle distinction between the normal *'illah* that invokes a particular ruling in a given case and what he terms as verification of the particular *'illah (taḥqīq al-manāṭ al-khāṣṣ)* in the issuance of judgment and *ijtihād*. The scholar (*mujtahid*) may be investigating the normal *'illah* and identify it in the case, for example, of a poor person who qualifies to be a recipient of *zakāh*, and also with references to the uprightness of a witness, but such an enquiry may take a different course when it is related to a particular individual as to what might seem appropriate or inappropriate to be applied in that particular case. The *mujtahid* needs, therefore, to be learned not only of the law and specific evidence but must also have acumen and insight to render judgment that is enlightened by both the overall consequences and special circumstances of each case.[27]

CONCLUSION

The *Maqāṣid* are undoubtedly rooted in the textual injunctions of the Qur'ān and the *Sunnah,* but they look mainly at the general philosophy and objectives of these injunctions often beyond the specialities of the text. The focus is not so much on the words and sentences of the text as on the goal and purpose that is advocated and upheld. By comparison to the legal theory of the sources, the *Uṣūl al-Fiqh,* the *maqāṣid al-Sharī'ah* are not burdened with methodological technicality and literalist reading of the text. As such the *maqāṣid* integrates a degree of versatility and comprehension into the reading of the *Sharī'ah* that is, in many ways, unique and rises above the vicissitudes of time and circumstance. At a time when some of the important doctrines of *Uṣūl al-Fiqh* such as general consensus (*ijmā'*), analogical reasoning (*qiyās*) and even *ijtihād* seem to be burdened with difficult conditions, conditions that might stand in a measure of disharmony with the prevailing socio-political climate of the present-day Muslim countries, the *maqāṣid* have become the focus of attention as it tends to provide a ready and convenient access to the

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Sharī'ah. It is naturally meaningful to understand the broad outlines of the objectives of the *Sharī'ah* in the first place before one tries to move on to the specifics. An adequate knowledge of the *maqāṣid* thus equips the student of the *Sharī'ah* with insight and provides him with a theoretical framework in which the attempt to acquire detailed knowledge of its various doctrines can become more interesting and meaningful.

[1]Cf. Wahbah al-Zuḥaylī, *Naẓariyyat al-Ḍarūrah al-Shar'iyyah*, 4th edn. (Beirut: Mu'assasat al-Risālah, 1405/1985), 50.

[2]See Jamāl al-Din 'Abd Allāh ibn Yūsuf al-Zayla'ī, *Naṣb al-Rāyah* li Aḥādīth al-Hidāyah (Surat: al-Majlis al-'Ilmī, 1938), 3: 333, *Kitāb al-Ḥudūd*.

[3]Cf. Yūsuf al-Qaraḍāwī, *al-Madkhal li Dirāsat al-Sharī'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1411/1990), 70–71.

[4]Al-Nasa'ī, *Sunan, Manāsik, Wujūb al-Ḥajj*.

[5]Cf. Aḥmad al-Raysūnī, *Naẓariyyat al-Maqāṣid 'ind al-Imām al-Shāṭibī* (Rabat, Morocco: Maṭba'at al-Najāḥ al-Jadīdah, 1411/1991), 149.

[6]Abū Ḥāmid Muḥammad al-Ghazālī, *al-Mustaṣfā min 'Ilm al-Uṣūl* (Cairo: al-Maktabah al-Tijāriyyah, 1356/1937), 1: 287.

[7]Qaraḍāwī, *Madkhal*, 73.

[8]'Izz al-Dīn 'Abd al-Salām al-Sulamī, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, ed., Ṭāhā 'Abd al-Ra'ūf Sa'd (Cairo: al-Maṭba'ah al-Ḥusayniyyah, 1351 AH), 1: 8.

[9]Taqī al-Dīn ibn Taymiyyah, *Majmū' Fatāwā Shaykh al-Islām Ibn Taymiyyah*, comp., 'Abd al-Raḥmān ibn Qāsim (Beirut: Mu'assasat al-Risālah, 1398 AH), 32: 134.

[10]Raysūnī, *Naẓariyyat al-Maqāṣid*, 44.

[11]Qaraḍāwī, *Madkhal*, 75.

[12]Abū Isḥāq Ibrāhīm al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed., Shaykh 'Abd Allāh Dirāz (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), 2: 393.

[13]*Ibid.*, 3: 394.

[14]*Ibid.*, 2:6; see also Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, ed., Muḥammad Munīr al-Dimashqī (Cairo: Idārat al-Ṭibā'ah al-Munīriyyah, n.d.), vol. 1; Qaraḍāwī, *Madkhal*, 58.

[15]Shāṭibī, *Muwāfaqāt*, 1: 243; Qaraḍāwī, *Madkhal*, 64–65.

[16]Shāṭbī, *Muwāfaqāt*, 2: 49–51; *idem, al-I'tiṣām* (Makkah al-Mukarramah: al-Maktabah al-Tijāriyyah, n.d.), 2: 131-35.

[17]Shāṭibī, *Muwāfaqāt*, 3: 148.

[18]*Ibid.*, 4: 179.

[19]Muḥammad Ṭāhir ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Tunis: Maṭba'at al-Istiqāmah, 1966), 15–16.

[20]*Ibid.*, 27.

[21]Ibn Qayyim, *I'lām*, 3: 12; Raysūnī, *Naẓariyyat al-Maqāṣid*, 336.

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[22]Cf. Raysūnī, *Naẓariyyah,* 338–39.

[23]Cf. Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, 3rd edn. (Damascus: Dār al-Fikr, 1409/1989), 4: 32. See for detailed illustrations of this type of *Istiḥsān,* Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), 225 ff.

[24]See for details the chapter on *Istiḥsān, Ibid.*

[25]Al-Bukhārī, *Ṣaḥīḥ, Kitāb al-Manāqib, Bāb Mā Yunhā min Da'wa 'l-Jāhiliyyah*.

[26]Mālik ibn Anas, *al-Muwaṭṭa', Kitāb al-Ḥajj, Bāb Mā Jā' fī Binā' al-Ka'bah*; Raysūnī, *Naẓariyyah,* 354.

[27]Shāṭibī, *Muwāfaqāt*, 4: 97.

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